IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1904 OF 2005

Mohan Bhagatram Gangwani ...Petitioner
vs.
State of Maharashtra ...Respondent

Mr.R.S.Apte i/b Mr.N.R.Bubna for the Petitioner
Ms Rajeshree Gadhvi, A.P.P. for State
Ms Puranik for B.M.C.

CORAM: A.S.OKA,J.
DATE : AUGUST 22,2005

P.C.:

1. Heard learned Advocate for the Petitioner, learned A.P.P. for State and the learned Counsel for the Mumbai Municipal Corporation. The Petitioner has been convicted of the offence under Section 52 read with Section 43 of M.R.T.P.Act,1966. The Petitioner has been sentenced to suffer simple imprisonment for one month and to pay a fine of Rs.4,000/- and in default to suffer simple imprisonment for 45 days. The conviction and sentence has been confirmed up to the Apex Court.

2. The Petitioner made an application before the learned Trial Judge praying that any third person appointed by the Trial Court may be directed to accompany the Petitioner during the term of the imprisonment or in the alternative the Petitioner along with the caretaker may be permitted to undergo simple imprisonment in the hospital. The case of the Petitioner is that he is a polio patient and is not able to live without assistance. The contention is that the

Petitioner has been declared as permanently orthopaedically handicapped person and therefore he cannot surrender alone to suffer the sentence. The learned Trial Judge rejected the application by observing that the Petitioner has not surrendered and on 27th June 2005 the Petitioner was absent. Accordingly, the learned Judge rejected the application by order dated 4th July 2005.

3. The learned Counsel for the Petitioner submitted that it is impossible for the Petitioner to survive without assistance and therefore the learned Trial Judge ought to have allowed the application. The learned A.P.P. on instructions stated that as and when the Petitioner will surrender, he will be immediately examined and if it is found that the Petitioner is sick or is unable to undergo imprisonment in jail, he will be moved to prison hospital.

4. The statement made by the learned A.P.P. is accepted. Even the the Petitioner has contended in paragraph 4-a of this Petition that as per the relevant rules, every new prisoner is to be medically examined and if found sick, is required to be moved to jail hospital. In view of the statement of the learned A.P.P. it is obvious that after medical examination if it is found necessary, the Jail Authorities are bound to move the Petitioner to the prison hospital or at the suitable place. Therefore, this Petition cannot be entertained.

5. Subject to what is stated above, Petition is rejected.

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JUDGE